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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,742	08/22/2001	Elisabeth Picard-Lesboueyries	212006US0	6495

22850 7590 11/29/2002

OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

EXAMINER

BENNETT, RACHEL M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,742

Applicant(s)

PICARD-LESBOUEYRIES,
ELISABETH

Examiner

Rachel M. Bennett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in Paper No. 6 is acknowledged. The traversal is on the ground(s) that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between Groups I-III. This is not found persuasive because applicants themselves claim two distinct methods of using. The first method is drawn to preventing and/or combating cellulite, while the other is refining the figure or the contours of the face. "Preventing" is not the same as "refining". Therefore, the two methods are distinct from each other.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 13-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No.6.

Specification

Claim Rejections - 35 USC § 112

3. Claims 1, 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 4 recites the limitation "sapogenin ester" in line 1. There is insufficient antecedent basis for this limitation in the claim.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 4, 6, 7, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonte et al. (US 5770223).

Bonte discloses the use of *Medicago saponins* for the preparation of cosmetic or pharmaceutical compositions. The compositions comprise 0.01% to 5% by weight of a saponins or a corresponding sapogenin, or a plant extract in which it is present (see abstract). The composition may also comprise an effective concentration of at least one other active substance selected from xanthines, vitamins or tyrosine (see col. 5 lines 13-30). Bonte does not specifically teach the xanthine to present in an amount of 0.01% to 10% or 0.15% to 7%.

Absent unexpected results, it is the position of the examiner it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition taught by Bonte to include 0.01% to 10% of the xanthine base because Bonte teaches xanthines may be added in an effective concentration. Therefore, one of ordinary skill in the art would be able to determine an effective concentration. The expected result would be a composition comprising saponins and xanthine in an effective amount.

7. Claims 1, 3, 4, 6, 7, 8, 9, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonte (US 5770223), and further in view of Koulbanis et al. (US 4288433).

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Bonte discloses the use of *Medicago saponins* and xanthines for the preparation of cosmetic or pharmaceutical compositions. Bonte does not specifically disclose xanthine derivatives.

Koulbanis discloses topical compositions comprising thioester and a xanthine derivative. Particular xanthines are disclosed such as theophylline, theobromine, and caffeine (see col. 2 lines 35-63).

Absent unexpected results, it is the position of the examiner it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Bonte by substituting the specific xanthine (theophylline, theobromine, or caffeine) taught by Koulbanis for the xanthine taught by Bonte because of the expectation of obtaining similar results. Bonte teaches xanthines in a topical composition. Koulbanis teaches xanthines in a topical composition. Therefore, it would be obvious to use the specific xanthines taught by Koulbanis in the composition taught by Bonte.

8. Claims 1, 2,3-5, 6, 7, 10, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bomte (US 5770223), and further in view of Loken (US 3136761).

Bonte discloses the use of *Medicago saponins* and xanthines for the preparation of cosmetic or pharmaceutical compositions. Bonte does not specifically disclose the sapogenin to be diosgenin or hecogenin.

Loken discloses the production of steroidal sapogenins from saponin containing plant material acidic hydrolysis. Plant materials, which are known to contain saponins, including particularly plants of the order of Liliiflorae in the families Liliaceae, Amerillidaceae and Dioscoreaceae. Specific plants, which can be treated, include: yaccas, agaves, dioscoreas,

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sarsaparillas, trilliums, henequen and sisals. Claims 6 and 7 disclose extracting hecogenin and diosgenin from insoluble material with an organic solvent.

Absent unexpected results, it is the position of the examiner it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Bonte by substituting the sapogenins taught by Loken for the sapogenins taught by Bonte because of the expectation of obtaining similar results without undue experimentation.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See 892.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel M. Bennett whose telephone number is (703) 308-8779. The examiner can normally be reached on Monday through Friday, 8:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

R. Bennett
November 26, 2002

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600